

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

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| JENNETTE WESTFALL, | : | Case No. 3:18-cv-28 |
| | : | |
| Plaintiff, | : | |
| | : | Magistrate Judge Sharon L. Ovington |
| vs. | : | (by full consent of the parties) |
| | : | |
| COMMISSIONER OF THE SOCIAL | : | |
| SECURITY ADMINISTRATION, | : | |
| | : | |
| Defendant. | : | |

DECISION AND ENTRY

This case is before the Court upon Plaintiff's Motion for Allowance of Attorney Fees (Doc. No. 16). Plaintiff indicated that although the Commissioner cannot consent to a fee under 42 U.S.C. § 406(b)(1), he does not object to the reasonableness of the fee requested by Plaintiff.

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$35,677.50. In the absence of opposition by the Commissioner, the Motion and supporting Exhibits establish that an award of attorney fees is reasonable and warranted under 42 U.S.C. § 406(b)(1) in the amount the Motion seeks.

In addition, the Court previously accepted the parties' stipulation to an award of \$3,200.00 in attorney fees to Plaintiff's counsel under the Equal Access to Justice Act (EAJA). (Doc. No. 15). The EAJA award, however, was subject to offset in the amount of any debt Plaintiff owed the Government. *See* Doc. No. 15. The current record does

not indicate whether or not Plaintiff's counsel actually received any of the EAJA award because of the potential offset. Counsel may not recover attorney fees under both the EAJA and 42 U.S.C. § 406(b) for the same work. Plaintiff's counsel must therefore return to Plaintiff the amount of EAJA fees, if any, he has actually received. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's Motion for Allowance of Attorney Fees (Doc. No. 16) is GRANTED;
2. The Commissioner shall pay Plaintiff's attorney fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$35,677.50;
3. Plaintiff's counsel shall refund to Plaintiff the amount of attorney fees, if any, he has actually received under the Equal Access to Justice Act (Doc. No. 15); and
4. The case remains terminated on the docket of this Court.

IT IS SO ORDERED.

September 29, 2020

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge